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## Digest of Attorney General Opinions

North Dakota Law Review

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## DIGEST OF ATTORNEY GENERAL OPINIONS

### SCHOOL DISTRICTS—ANNEXATION

May a special school district, under the annexation laws of North Dakota, annex an *entire* contiguous school district?

The opinion states: There seems to be no logical reason why an entire district could not be attached by annexation to another district. The only limitation is that no part or area of a district can be left with less than an assessed valuation of \$100,000.00 per teacher or \$125,000.00 per teacher if the remaining area has a graded school with two or more teachers, as provided in section 15-27-06 of the North Dakota Century Code.

### BOTTLE CLUBS—EFFECT OF THE NEW "BOTTLE CLUB" LAW

Are "bottle clubs" under the new law to be regulated in the same manner as other retail liquor establishments?

The opinion states: The Legislature has clearly indicated its intent to treat "bottle clubs" the same as licensed retail liquor establishments. The "bottle clubs" must comply with the same statutes, rules, regulations, standards, and qualifications as such retail liquor establishments. This compliance then would necessarily include the formal licensing requirements and the regular state closing hours.

### CHARITABLE ORGANIZATIONS—LICENSE TO SOLICIT CONTRIBUTIONS

Does the American National Red Cross come within section 50-22-02 of the code requiring charitable organizations to obtain a license from the secretary of state before it will be permitted to solicit contributions in this state.

The opinion states: Section 50-22-01 of the North Dakota Century Code defines a charitable institution and we cannot as a matter of law place the American National Red Cross in an exemption provision from the clear, unambiguous language of the act. The North Dakota Legislature specifically wished to include every organization except those specifically named in the exception or coming within the other class of exemptions.

SCHOOL DISTRICT—AUTHORITY OF SCHOOL BOARD  
TO MOVE SCHOOLHOUSE

A public school district is attempting to move a schoolhouse from its present location to another part of the district in order to combine it with another school. The parents of six children who would attend the school in its present location have made written protest of the proposed move.

The opinion states: Section 15-29-08 of the North Dakota Century Code as amended provides that a board may close any school when the average attendance is less than six. However, the board shall reopen any school which has been closed for the above reason if written demand is made by the parents or guardians of six or more children of compulsory school age residing within two and one-half miles of the school. Therefore, the school board is without authority to move the school building.

AUTOMOBILE REGISTRATION AND LICENSE PLATES—  
BRANCH OFFICE SERVICE FEES

May a branch office charge a service fee for the processing of registrations and distributions of license plates.

The opinion states: Section 39-04-19 of the North Dakota Century Code relative to registration fees required to be paid on motor vehicles and Section 39-02-03 relating to the establishment of branch offices do not include any provision for the charging of a service fee. A further search of the statutes does not reveal any legal basis for charging a service fee by branch offices in the processing of registration and distribution of license plates.

SCHOOL DISTRICTS—TRANSPORTATION OF STUDENTS

May a school district send its buses into another district to pick up students?

The opinion states: A school board has no authority to furnish transportation to students residing in other districts unless arrangements are made between the districts. If such transportation is furnished, it should be paid for by the home district of the transported students or their parents. Any expenditure of school district funds for the purpose of providing

transportation for students residing in another district would be unlawful.

#### GOVERNOR'S INVESTIGATORY POWERS

Does the Governor of North Dakota have the power to establish a force of qualified investigators to investigate policies and practices in state institutions and departments?

The opinion states: The Governor possesses no prerogative powers but only such powers as are conferred upon him by the Constitution of the laws of this state. Neither authorize the Governor to institute such a plan. The Legislature may authorize the Governor to investigate, but without such authorization the Governor would be powerless to act. Section 54-07-01 of the North Dakota Century Code would enable the Governor to ask for reports from state officials and department and institution heads and if necessary, ask for audits or examinations of these units.

#### EXECUTIVE ORDER—GOVERNOR'S POWER OVER STATE TAX DEPARTMENT

May the Governor of North Dakota, through an executive order, require the State Tax Department to prepare an estimate of state income and the Department of Accounts and Purchases to estimate fund balances and state expenditures?

The opinion states: The Tax Commissioner is a constitutionally elected officer whose duties are set forth in the various statutes enacted by the Legislature. These duties may be enlarged upon or modified either by constitutional amendments, initiated measures, or by the Legislature. The Director of the Department of Accounts and Purchases is appointed by the Governor and his duties are fixed by section 54-44-04 (2) of the North Dakota Century Code. This section provides in essence that said director shall be responsible for the preparation of revenue and fixed expense estimates. In conclusion, the responsibility of estimating state income and revenue cannot be imposed upon the Tax Commissioner by executive order without first having appropriate legislation enacted. The constitutional or statutory duties or responsibilities of any office may not be transferred to any other department without appropriate legislation.

## SCHOOL DISTRICTS—RESIDENCY FOR SCHOOL PURPOSES

May a child making his permanent home with someone other than his parents be required to pay a tuition because his parents reside in another school district?

The opinion states: There is no construction of the law which permits a child to come into a school district merely for the purpose of school privileges, but when the child is making his permanent home with someone other than his parents, the child is permitted to attend the school where his permanent home is located without payment of tuition.